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26 Cung Le, Nathan Quarry, Jon Fitch, Brandon  
27 Vera, Luis Javier Vazquez, and Kyle Kingsbury,  
28 on behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

Zuffa, LLC, d/b/a Ultimate Fighting  
Championship and UFC,  
Defendant.

Case No. 2:15-cv-01045-RFB-BNW

**PLAINTIFFS' MOTION IN LIMINE NO. 19  
TO PRECLUDE EVIDENCE OF OR  
REFERENCE TO REGULATORY  
INVESTIGATIONS OR INACTION**

1 Plaintiffs submit this Motion in Limine to preclude evidence of or reference to government  
 2 investigations or inaction. Specifically, Plaintiffs believe that Zuffa may attempt to introduce evidence  
 3 regarding or referencing the Federal Trade Commission's commencement and closure of two  
 4 investigations of Zuffa: one in 2012, in connection with Zuffa's acquisition of Strikeforce;<sup>1</sup> and one in  
 5 2015, in connection with Zuffa's contracting practices.<sup>2</sup> Any reference to or evidence of these FTC  
 6 investigations should be excluded pursuant to Fed. R. Evid. 403, "as the risk of prejudice substantially  
 7 outweighs any probative value." *In re Urethane Antitrust Litig.*, No. 2:08-5169 (WJM-MF), 2016 WL  
 8 475339, at \*6 (D.N.J. Feb. 8, 2016); *see also Goode v. City of Southaven*, No. 3:17-CV-60-MPM-RP,  
 9 2019 WL 1100556, at \*5 (N.D. Miss. Mar. 7, 2019) ("To the extent that evidence of investigations and  
 10 their outcomes carries any probative value, such value is substantially outweighed by the danger of  
 11 unfair prejudice, confusing the issues, misleading the jury, and wasting time").

12 The risk of unfair prejudice is particularly acute here, as the FTC investigations at issue  
 13 encompassed only individual component parts of the anti-competitive Scheme alleged by Plaintiffs.  
 14 The FTC investigated Zuffa's 2011 acquisition of Strikeforce but did not consider it in the context of  
 15 the other acquisitions, long-term exclusive contracts, and coercion that comprised the anti-competitive  
 16 Scheme. Similarly, the FTC investigated Zuffa's contracting practices in 2015, but not in conjunction  
 17 with the acquisitions and coercion that, along with Zuffa's contracting practices, comprised the  
 18 Scheme. As this Court has already determined, the alleged Scheme should be considered as a whole,  
 19 rather than broken down into its component parts. *See, e.g., Le v. Zuffa, LLC*, No.  
 20 215CV01045RFBBNW, 2023 WL 5085064, at \*27 (D. Nev. Aug. 9, 2023) ("Plaintiffs have shown, by  
 21 a preponderance of the common evidence and for purposes of class certification, that Defendant's  
 22 anticompetitive Scheme violated the antitrust law").

23 The closure of these FTC investigations does not constitute relevant evidence that Zuffa did not  
 24 engage in the unlawful anti-competitive Scheme alleged in this case. Indeed, both of the FTC's letters  
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26 <sup>1</sup> A January 25, 2012 letter from the FTC announcing the closure of the first investigation appears as  
 27 DX-0824 on Defendant's Trial Exhibit List. It is attached hereto as Exhibit W.

28 <sup>2</sup> A November 20, 2015 letter from the FTC announcing the closure of the second investigation is  
 attached hereto as Exhibit X.

1 informing Zuffa's then-counsel that the FTC was closing its investigations expressly stated, "*This*  
 2 *action is not to be construed as a determination that a violation may not have occurred*, just as the  
 3 pendency of an investigation should not be construed as a determination that a violation has occurred."  
 4 *See Exhs. W, X* (emphasis added).

5 If the jury were informed that the FTC had investigated some of the acts that form the alleged  
 6 anticompetitive Scheme in this case, and declined to take any regulatory action, it might infer from the  
 7 FTC's inaction that Zuffa did not violate the antitrust laws. Such an inference would be unwarranted, as  
 8 both of the FTC's letters make clear.

9 The mere fact that the FTC declined to pursue regulatory enforcement actions against Zuffa  
 10 does not mean that Zuffa did not violate the law, *see Exhibits W & X hereto*, but only that the FTC  
 11 decided to allocate its limited resources elsewhere. Indeed, where private antitrust plaintiffs are already  
 12 seeking redress for alleged antitrust violations, as was the case when the FTC sent its November 20,  
 13 2015 closure letter (**Exh. X**), the FTC might well decide its limited resources would be more efficiently  
 14 deployed elsewhere. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No.  
 15 05MD1720MKBJO, 2019 WL 6888488, at \*21 (E.D.N.Y. Dec. 16, 2019), *aff'd sub nom. Fikes*  
 16 *Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704 (2d Cir. 2023) (quoting *Reiter v. Sonotone*  
 17 *Corp.*, 442 U.S. 330, 344 (1979)) ("Private antitrust lawsuits 'provide a significant supplement to the  
 18 limited resources available' to public antitrust regulators."); *see also In re High Fructose Corn Syrup*  
 19 *Antitrust Litig.*, 295 F.3d 651, 664-65 (7th Cir. 2002) ("The Justice Department has limited  
 20 resources. . . . It may also have felt that the antitrust class action bar had both the desire and the  
 21 resources to prosecute such a suit vigorously, as indeed it has done.").

22 For these reasons, courts in private antitrust actions, in this Circuit and elsewhere, have  
 23 repeatedly granted motions *in limine* to exclude reference to or evidence of regulatory investigations or  
 24 inaction. *See, e.g., Shoppin' Bag of Pueblo, Inc. v. Dillon Cos., Inc.*, 783 F.2d 159, 165 (10th Cir. 1986)  
 25 (affirming exclusion of evidence of FTC investigation); *Urethane*, 2016 WL 475339, at \*6 (precluding  
 26 evidence of DOJ investigation or its closure); *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, No.  
 27 2:06-CV-1797, 2016 WL 5928685, at \*2 (E.D. Pa. Jan. 8, 2016) (precluding evidence of FTC  
 28

investigation); *In re Polyurethane Foam Antitrust Litig.*, No. 1:10 MD 2196, 2015 WL 12748002, at \*1 (N.D. Ohio Mar. 6, 2015) (precluding reference to DOJ investigation and non-prosecution); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 07-MD-01819 CW, 2010 WL 10086747, at \*2 (N.D. Cal. Dec. 16, 2010) (precluding “reference to or evidence of the Department of Justice’s closing of its SRAM investigation”). This Court should do the same.<sup>3</sup>

<sup>3</sup> Even if the Court were to permit evidence of the *fact* of the FTC investigations, it should nonetheless preclude reference to or evidence of the *closure* of those investigations, as such evidence would be far more prejudicial than probative. See *Urethane*, 2016 WL 475339, at \*6; *Polyurethane Foam*, 2015 WL 12748002, at \*1; *SRAM*, 2010 WL 10086747, at \*2.

1 Dated: February 29, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of February, 2024 a true and correct copy of PLAINTIFFS' MOTION IN LIMINE NO. 19 TO PRECLUDE EVIDENCE OF OR REFERENCE TO REGULATORY INVESTIGATIONS OR INACTION was served via the District Court of Nevada's ECF system to all counsel of record who have enrolled in this ECF system.

/s/ Joseph R. Saveri  
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